

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Rules Applicable to Appeals of Post Office Closings

Docket No. RM2011-13

COMMENTS OF THE PUBLIC REPRESENTATIVE

(October 3, 2011)

**I. INTRODUCTION**

On August 18, 2011, the Commission issued Order No. 814 instituting this proceeding to consider proposed changes to the rules governing appeals of post office closings and consolidations.<sup>1</sup> Thereafter, on August 25, 2011, the Commission issued a supplemental notice of additional proposed changes.<sup>2</sup> For the reasons set forth below, the Public Representative supports the Commission's initiative as an important improvement in the rules applicable to appeals of post office closings and consolidations (Appellate Rules) and makes several recommendations intended to further improve the appellate process.

**II. BACKGROUND**

**A. Statutory and Regulatory Framework**

The statutory basis for the closing and consolidation of post offices is provided by 39 U.S.C. 404(d). Sections 404(d)(1) through (4) establish parameters for the closing and consolidations of post offices by the Postal Service. Section 404(d)(5)

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<sup>1</sup> Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, August 18, 2011 (Order No. 814).

<sup>2</sup> Supplemental Notice Regarding Proposed Rules Governing Appeals, August 25, 2011 (Order No. 823).

authorizes appeals to the Commission of Postal Service closing and consolidation determinations.

In furtherance of its authority to close and consolidate post offices, the Postal Service adopted regulations codified at 39 CFR part 241 (Postal Service Regulations) and a handbook entitled "Handbook PO-10, *Post Office Discontinuance Guide*" (Handbook). The purpose of the Handbook is "to assist field personnel in the Post Office<sup>TM</sup> discontinuance process." Handbook at 1.

Appeals to the Commission of post office closings and consolidations are governed by regulations adopted by the Commission and codified at 39 CFR parts 3001, subparts A and H. It is these regulations that are the subject of the current rulemaking proceeding. In addition, the Commission has created a form, PRC Form 61, designed to assist persons appealing post office closings and consolidations in presenting their objections to proposed closings and consolidations.

## **B. Jurisdictional Issue Regarding Stations and Branches**

A recurring issue under the Commission's Appellate Rules has been whether Postal Service stations and branches are "post offices" under 39 U.S.C. 404(d)(5). Historically, the Postal Service has argued that stations and branches are not "post offices" for purposes of section 404(d)(5) and that their closing or consolidation cannot be appealed to the Commission. Docket No. A2010-3, Notice of United States Postal Service, March 9, 2010, at 1. The Commission has taken the opposite position and has consistently rejected Postal Service motions to dismiss appeals of station and branch closings and consolidations. Docket No. A2011-15, Order No. 832, Order Affirming Determination, August 30, 2011, at 3 n.4.

In recent cases before the Commission, the Postal Service has adopted the practice of reiterating its legal position that the Commission lacks jurisdiction to entertain appeals of station or branch closings or consolidations without formally moving to dismiss such appeals. Docket No. A2011-17, United States Postal Service Notice of Filing and Application for Non-Public Status, July 1, 2011, at 1-3. Because the

Commission has ultimately confirmed such closures and consolidations, there has, to date, been no occasion for the issue to be presented to a court with jurisdiction to resolve the issue definitively. Consistent with the reservation of its legal position regarding the station and branch jurisdictional issue, the Postal Service has voluntarily filed with the Commission the records on which it has based its decisions, carefully noting that the records being supplied are not technically the records required by Postal Service Regulations for "post office" closings and consolidations. *Id.*

### **C. The Commission's N2009-1 Advisory Opinion Proceedings**

During 2009-2010, the Commission conducted proceedings on a request by the Postal Service for an advisory opinion before implementing a systemwide application of its station and branch discontinuance process.<sup>3</sup> In its advisory opinion issued at the conclusion of that proceeding, the Commission made a number of recommendations regarding the procedures used by the Postal Service to close or consolidate stations and branches.<sup>4</sup>

### **D. New Postal Service Regulations**

In Order No. 814 instituting this proceeding, the Commission noted that the Postal Service had recently adopted new regulations governing the closing and consolidation of post offices. Order No. 814 at 7. Those regulations were effective July 14, 2011, and apply to discontinuance actions for which initial feasibility studies are initiated on or after that date. 39 CFR 241.3(a)(1)(ii). In those cases in which the initial feasibility studies were initiated prior to July 14, 2011, the prior rules in section 241.3 will apply. *Id.*

For discontinuance actions conducted under the new regulations, the Postal Service will, consistent with its recent practice, preserve its legal position that stations

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<sup>3</sup> Docket No. N2009-1, Station and Branch Optimization and Consolidation Initiative, 2009.

<sup>4</sup> Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010 (SBOC Opinion).

and branches are not "post offices" under 39 U.S.C. 404(d), while allowing appeals to the Commission to proceed to decision. 76 FR at 41414-41415. More specifically, the Postal Service's new regulations expressly govern "the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued." 39 CFR 241.3(a)(1)(i). At the same time, the Postal Service continues to maintain that "the Commission does not have appeal jurisdiction over stations and branches under current law", and states that it "may, in its discretion, decline to challenge the Commission's jurisdiction in certain (or even, if it chooses, all) cases...." 76 FR at 41415.

In issuing its new regulations, the Postal Service adopted most, but not all, of the recommendations made by the Commission in its SBOC Opinion and submitted by the Commission in its comments in the Postal Service's rulemaking proceeding. See 76 FR at 41418-41419.

### **III. COMMENTS AND RECOMMENDATIONS**

#### **A. General Comments**

The Commission's Appellate Rules are a subset of the rules of practice in 39 CFR part 3001. As such, those rules were originally promulgated in terms more readily understood by practicing attorneys and other regulatory professionals. However, experience has shown that most appeals of post office closings and consolidations are instituted by private citizens without the benefit of legal representation. From the perspective of these individuals, the language of the rules is daunting and the procedures, while familiar to practicing attorneys, forbidding. The difficulties experienced by many petitioners not only leaves them frustrated, but, in their effort to comply with the rules, occupies an increasing amount of Commission staff time in explaining relevant procedures and in assisting with basic tasks, such as the filing of electronic documents.

Many of the changes proposed by the Commission have the potential for simplifying the appeals process to the benefit of unrepresented participants, the

Commission and its staff, and the public generally. Among the proposed changes that the Public Representative endorses in the form proposed are the following:

- (1) The use of simplified, non-technical language (Order No. 814 at 3);
- (2) The acceptance of comments in lieu of formal legal briefs (*id.* at 6, 14);
- (3) Elimination of formal interventions as a precondition to participation (*id.* at 3);
- (4) Elimination of oral argument as unnecessary (*id.* at 6);
- (5) Elimination of Federal Register notice requirement (Order No. 823 at 1-3);
- (6) Authorization to file hard copy documents without need for a waiver (Order No. 814 at 2, 13; Order No. 823 at 4).
- (7) Elimination of Commission notice to Postal Service regarding filing of appeal (Order No. 823 at 2);
- (8) General expedition of the appeal schedule (Order No. 814 at 4); and
- (9) Adoption of a definition of "administrative record" that avoids unnecessary conflict with Postal Service over the station and branch jurisdictional issue (*id.* at 4).

Together these changes have the potential for simplifying the appeals process without prejudicing the rights of any participant or the rights of the Postal Service.

Although simplification of the appeals process is both necessary and appropriate, there are certain elements of the rules of practice that must be relied upon to insure the integrity of the appeals process (such as rule 7 prohibiting *ex parte* communications), or to accommodate requests for specific relief that addresses unique situations (such as rule 21 authorizing the filing of motions). Because of considerations such as these, the Commission must seek to achieve a balance that maximizes the ability of unrepresented postal customers to present their case while, at the same time, providing structure to the appeals process that incorporates flexibility to deal with out-of-the-ordinary situations. With one exception, discussed below, the Public Representative supports the Commission's decision to incorporate specific rules of practice into the appeals process even though some petitioners and commenters may find references to these rules to be confusing.

To fully realize the potential benefits of this rulemaking proceeding, the Public Representative submits that additional changes to the proposed rules should be considered. Such recommended changes are presented in the following section. For convenience, the Public Representative has included a red-lined version of the proposed regulations containing his recommended changes as Attachment A. In addition, the Commission should consider changes that go beyond the scope of this proceeding, such as revisions to information on the appeals process currently provided on its website.

## **B. Recommended Changes**

### **1. Section 3025.1 Definitions.**

The terms defined in this section are used periodically throughout the new regulations. The inclusion of the definitions of such recurring terms in this section facilitates location of a definition when the reader comes across a defined term. One term that is not included in the definitional section, but appears elsewhere, the term "Petition for Review." As proposed, the definition of that term appears in section 3025.10(a).

The Public Representative suggests three changes related to the definition and use of the term "Petition for Review." First, the definition of this term should be included in section 3025.1 for ease of location by readers. Second, the definition should be revised to incorporate all of the essential elements of a petition seeking review. Those elements include: (1) a requirement that the petition be in writing (currently captured by section 3025.10(a)); (2) a requirement that the petition be accepted by the Commission as an appeal of a closing or consolidation (currently incorporated in the definition of "Petitioner" in section 3025.1(c); and (3) a requirement that the petition be either in hardcopy form (other than a facsimile) or electronic form (other than an e-mail, instant message, or other form of electronic communication). It is the Public Representative's understanding that these latter restrictions reflect current administrative practice. If that

is correct, they should be expressly stated in the Commission's regulations in order to avoid unnecessary confusion and controversy.

Finally, if the Commission agrees to the foregoing suggestions, it should modify the proposed definition of "Petitioner" in section 3025.1(c) to state simply that a Petitioner is a person who files a Petition for Review.

## **2. Section 3025.2 Applicability.**

This section identifies certain existing rules of practice that will apply to appeals of post office closings and consolidations. To ensure consistency with the proposed regulations, the Public Representative recommends the following changes:

1. The term "Appellant" defined in rule 5(m) should be changed to "Petitioner", as that is the term that will hereafter be used in sections 3025.1, *et seq.* to refer to the person who appeals a closing or consolidation.

2. The reference in section 3025.2(b) to rule 11 should be changed to rule 11(a), (c)-(f). Since there will no longer be intervenors in post office closing and consolidation appeals cases, there is no need to refer in section 3025.2(b) to rule 11(b). Similarly, since the Commission's Secretary will be responsible for serving hardcopy filings made by participants in appeals cases (see proposed change to rule 12), there is no need to refer in section 3025.2(b) to the requirements regarding certificates of service of hardcopy filings that currently appears in rule 11(g).

3. The reference to rule 20 should be eliminated in light of the Commission's decision no longer to require interested persons to intervene in appeals cases in order to be eligible to comment on a proposed closure or consolidation that is contested by a Petitioner.

Finally, while the filing of motions in appeal proceedings will hopefully be rare, the possibility of such filings cannot be ignored. Under existing rule 21(b) of the rules of practice, answers must be filed within 7 days. While a 7 day deadline is appropriate when participants file online, most appeal proceedings involve participation by non-lawyers who file and receive service by mail. To insure that such participants have

adequate time to respond to motions by the Postal Service or others, the Public Representative recommends the addition of a new subsection (c) to section 3025.2 that provides for the filing of answers within 14 days of the date any motion is filed. Such a modest extension should not affect the overall time for processing an appeal and will hopefully avoid the need for requests for an extension of filing deadlines and for Commission action on such requests. In addition, because of the unfamiliarity of most participants with the appeals process, the Commission should require the Postal Service to include in any motion it files a statement identifying the deadline for any participant's answer.

### **3. Section 3025.3 Notice by the Postal Service.**

The notice provisions in this proposed section apply to: (a) proposals to close or consolidate post offices (section 3025.3(a)); (b) final determinations to close or consolidate post offices (section 3025.3(b)); and (c) the special subset of cases in which proposals or final determinations are made regarding the closure or consolidation of post offices whose operations have ceased as a result of an emergency suspension at the time the proposal or final determination are issued (section 3025.3(c)). The purpose of each of these subsections is to ensure that postal patrons are made aware of the proposed or approved closure or consolidation of a postal facility and are given a fair and meaningful opportunity to either comment on the proposal or appeal the final determination.

The Public Representative supports adoption of each of these three subsections and notes that, with one exception, the new Postal Service regulations appear to be consistent with the intent and spirit of the Commission's proposed regulations. For example, the Commission's proposed section 3025.3(a) requiring notices regarding proposals to close or consolidate is comparable to section 241.3(c)(4)(vii) and (d) of the Postal Service's new regulations. Section 3025.3(b) requiring notice of final determinations of closings and consolidations is comparable to the requirements in section 241.3(g)(1) of the new Postal Service regulations. Section 3025.3(c) of the



Commission's proposed regulations requiring notices of proposals and final determinations affecting post offices whose operations are subject to an emergency suspension is comparable to requirements in section 241.3(d)(1)(iv) and (g)(1)(i) of the Postal Service's new regulations.

The one important difference between the notice provisions in the Commission's proposed regulations and the notice provisions in the Postal Service's new regulations relates to notice of the right of appeal. The Commission's regulations require that notice be given of the right to appeal all final determinations, including final determinations affecting stations and branches as well as "post offices" narrowly defined. Section 3025.3(b). By contrast, the Postal Service requires that notice of the right of appeal be given only with respect to "post offices" narrowly defined, but is not required for stations or branches. 76 FR 41414-41415; see *also* 39 CFR 241.3(f)(2)(ii). This difference arises because of the long-standing difference of opinion between the Commission and the Postal Service over the Commission's jurisdiction over stations and branches discussed in Section II.B., *supra*.

The Public Representative supports the Commission's inclusion of a requirement of a notice of appeal rights for all retail postal facilities. Failure to require a notice of appeal rights would create a trap for the unwary Postal Service customer unfamiliar with the intricacies of postal law. Should the Postal Service fail to provide such notice and an untimely appeal be filed, an appropriate remedy would be for the Commission to equitably toll the appeal deadline and accept the appeal.

#### **4. Section 3025.10 Starting an Appeal.**

As proposed, this section states that an appeal is commenced by "notifying" the Commission and that the "notification is known as a Petition for Review." Since the notification to the Commission requires the submission of a Petition for Review (see proposed rule 3025.11) a more precise statement would be that the "an appeal is commenced by submitting a Petition for Review to the Postal Regulatory Commission." This clarification would avoid the possibility that a prospective appellant would attempt

to use some form of notification of its intent to submit a Petition for Review as a surrogate for the actual submission itself.

The Public Representative also recommends that a Petition for Review should include the following additional information: (1) the Petitioner's phone number; (2) the ZIP Code of the post office that is the subject of the appeal; and (3) a copy of the Postal Service's Final Determination, if available. Inclusion of the Petitioner's phone number will avoid unnecessary hurdles encountered by Staff, Public Representatives, and others in contacting the Petitioner, especially during the early phases of an appeal. Inclusion of the ZIP Code of the subject post office will also assist both decisional Staff and Public Representatives in ascertaining or confirming the post office at issue. Inclusion of the Final Determination will also provide both decisional Staff and Public Representatives a preliminary view of the case without awaiting the filing of an administrative record. Such a preliminary view will foster the Commission's goal of expediting review proceedings.

#### **5. Section 3025.11 Transmitting an Appeal.**

As proposed, this section deals solely with the submission of a Petition for Review. However, a subsequent section (section 3025.14(a)) would make the submission of comments by another participant subject to this same section 3025.11. For consistency and to avoid unnecessary confusion, the Public Representative recommends that section 3025.11 be broadened to cover petitions for review, comments, motions, and any other documents submitted by participants other than the Postal Service. Such a change would also be consistent with the Commission's proposed insert to rule 9(a) of the Commission's rules of practice. That latter change exempts participants, other than the Postal Service, from the filing requirements of part 3025. Order No. 814 at 16.

## **6. Section 3025.13 Deadlines for Appeals.**

The Public Representative recommends two changes to this section. First, as proposed, this section states that "an appeal is due within 30 days...." The Public Representative recommends that the words "must be submitted" for the words "is due". As revised, the section would state that "an appeal must be submitted within 30 days...." This change is consistent with the previous change recommended by the Public Representative for section 3025.10.

Second, the Public Representative recommends that the triggering date for calculating the appeal submission deadline should be changed from the date that Postal Service's Final Determination is "made available" to the date that the Final Determination is "posted" in proposed sections 3025.13(a)-(d).

The term "made available" is subject to differing interpretations that could involve unnecessary controversy and the expenditure of unnecessary effort by the Commission and the Staff. For example, the term could be interpreted to mean "made available to the public" or "made available to the individual petitioner." Thus, if the Postal Service were to publicly post the Final Determination at the affected post office and were to mail notices to each customer served by such post office, a prospective petitioner could claim that the 30 day appeal clock would not begin to run until a complete copy of the Final Determination is mailed to him. To avoid the need for the Commission to resolve disputes over when the 30 day appeal clock begins to run, the Commission should adopt an objective, more easily ascertainable, date that the Final Determination is posted. Such a change has the advantage of tracking the Postal Service's use of the posting date as the triggering event for determining the appeal deadline under both the old and new regulations. 39 CFR 241.3(f)(2)(ii) (effective prior to July 14, 2011); and 39 CFR 241.3(f)(2)(ii) (effective July 14, 2011).

## **7. Section 3025.21 Filing of the Administrative Record.**

In addition to requiring the filing of the administrative record within 10 days of the date of posting of a petition for review, this section would require the Postal Service to

notify by First-Class Mail those participants who do not file electronically. The Public Representative supports both of these requirements and recommends further that the Postal Service be required to include in its notice to participants the locations where the administrative record can be inspected. Finally, the Postal Service should be required to notify the Commission of the date on which the notice was mailed to participants. This additional requirement can be easily met and will enable the Commission and its Staff routinely to confirm that participants who do not file electronically are aware of the opportunity to address the bases for the Postal Service's closure or consolidation decision.

**8. Section 3025.22 Making documents available for inspection by the Public.**

Like section 3025.21, this section would require the Postal Service to make appeal-related documents available for public inspection and to provide notice by First-Class Mail to participants of where those documents can be inspected. The Public Representative again recommends that the Postal Service be required to notify the Commission of the date that such notice was mailed. Such an additional requirement should not be unduly burdensome and will facilitate the Commission's ability ensure that persons directly impacted by the Postal Service's discontinuance or consolidation decision are kept informed of the appeal proceedings.

**9. Section 3025.30 Suspension Pending Review.**

The Commission is statutorily authorized to suspend the effectiveness of a Postal Service discontinuance or consolidation decision pending completion of appeal proceedings. 39 USC 404(d)(5) ("The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal.").

In this section, the Commission proposes to exercise its authority by adopting a general rule that all final determinations of closure or consolidation will be suspended pending outcome of appeals. Under current practice, the burden is on the petitioner to

file an application for suspension which the Postal Service may respond to within 10 days. 39 CFR 3001.114.

The Public Representative supports the Commission's proposal for several reasons. First, the existing practice places an unfair burden on petitioners. As the Commission has recognized, most petitioners are non-lawyers totally unfamiliar with federal administrative law, much less the Commission's authority to suspend closure or consolidation of a post office pending appeal under 39 USC 404(d)(5). Many assume, incorrectly, that the Postal Service's decision will not become effective until after the Commission has completed its review of their arguments opposing closure or consolidation. By the time they learn of the opportunity to request a suspension, it is too late, since the current regulation requires that the application for suspension be filed "at the time of the filing of a petition for review".<sup>5</sup> Without the proposed regulation, most participants will, for all practical purposes, be denied any chance of keeping their post office open pending the outcome of the appeal.

Second, the Postal Service has ample opportunity to conduct closure or consolidation reviews, issue final determinations, and set closure or consolidation dates that accommodate Commission appeal proceedings without closing a post office before the appeal proceedings have been completed. Commission proceedings are subject to a statutory deadline of 120 days from receipt of an appeal. 39 USC 404(d)(5). Appeals must be filed within 30 days of the posting by the Postal Service of a final determination. Thus, the Postal Service knows that the Commission will reach a decision within approximately 150 calendar days from the date the Postal Service posts its final determination.<sup>6</sup> By timing its review procedures, the Postal Service can without great difficulty accommodate not only its review process, but the Commission's appeal

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<sup>5</sup> Under existing practice, intervenors also have the right to apply for a suspension of the Postal Service's determination pending review. However, they, too, usually learn only after intervening that the application for suspension was due "at the time...of the filing of a notice of intervention".

<sup>6</sup> Variance of a few days from the 150 day total review period can occur for only limited reasons, such as the filing of the petition for review by mail thereby adding several days before acceptance by the Commission, or the scheduling of procedural deadlines around weekends or holidays.

procedures, prior to the date selected for closing or consolidation. The Commission's proposal to expedite the appeals process to approximately 75 days further enhances the Postal Service's flexibility to await completion of the appeals process before closing or consolidating a post office. Order No. 814 at 5.

Third, as one recent participant in an appeal proceeding has pointed out, the failure to suspend a closing or consolidation pending completion of an appeal has the potential for rendering the entire appeals process meaningless:

In fact, if the Commission determines that the Postal Service was not justified in discontinuing service, what relief is available to all the people who are adversely affected ... by the Postal Service's action? If there is no remedy that can be imposed by the Commission after the postal service ... has been discontinued and the ... facility has been removed, what is the purpose of the whole Commission appeal process?

Participant Statement at 5, Lafayette Postal Facility, Freehold, New Jersey, Docket No. A2011-19 (July 22, 2011).

Notwithstanding the foregoing, the Public Representative acknowledges that circumstances may arise in which it would be appropriate to permit closing of the postal facility before appeal proceedings can be completed. Because of that possibility, the proposed regulations should be revised to provide the Postal Service with the opportunity to request waiver of the generally applicable suspension of closure or consolidation imposed by section 3025.30. Such a request should be made by motion not later than the date that the Postal Service files the administrative record. This will afford interested participants the opportunity to respond to the request. If the Postal Service makes its request for waiver after the administrative record has been filed, it should be required to show good cause for the delay in making its request. To ensure that non-lawyer petitioners or participants are made aware of the deadline for responding to any such Postal Service motion, the motion shall clearly identify the deadline for the filing of answers.

**10. Section 3025.43 Due Date for Replies to the Postal Service.**

While expedition of appeals is appropriate, there is one deadline that the Public Representative believes has been unduly shortened, namely, the 7 day deadline prescribed replies to the Postal Service's response. For electronic filers, the 7 day deadline should be adequate. However, for participants who do not file electronically, 7 days is clearly inadequate. Upon the filing by the Postal Service of its response under proposed rule 3025.42, service on participants who do not file electronically will be the responsibility of the Secretary under proposed section 3001.12(a)(3). Order No. 814 at 8. Such service is to be accomplished by First-Class Mail. *Id.* Assuming 3 days for delivery and another 3 days for delivery by mail of the participant's reply under proposed section 3025.43, this will afford participants who do not file electronically only 1 day to prepare and forward a response. To expect this of such a participant would clearly be unfair. Moreover, if there is any delay in mail service in either direction, it will be physically impossible for the participant to meet the deadline.

To avoid confusion and possible requests for extensions of time that would unnecessarily waste resources, the Public Representative recommends that the 7 day deadline in this section be expanded to 14 days. If adopted this change would not materially undercut the Commission's goal of expediting appeal proceedings.

**C. Recommendations Regarding Related Matters**

The Commission currently has posted on its website information regarding the appeals process. On its homepage, there is link entitled "Post Office Closing Appeal Rights" which provides a brief introduction to the appeals process with links to applicable Commission regulations. The replacement of Subpart H will require posting of the new regulations. Similarly, a link to the Commission's rules of practice in the Code of Regulations will need to be replaced with the applicable rules of practice as revised. These and possibly other administrative changes should be promptly implemented in conjunction with implementation of the regulatory changes that are the

subject of this proceeding. Failure to do so will only create and compound confusion unnecessarily as the number of pending appeals increases.

## **V. CONCLUSION**

The Public Representative supports the Commission's proposal to revise and improve its rules governing post office closing and consolidation appeals. The Commission should promptly issue new regulations and adopt the changes recommended herein.

Respectfully Submitted,

/s/ Richard A. Oliver

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**Part 3025, Rules for Appeals of Postal Service  
Determinations to Close or Consolidate Post Offices**

**§ 3025.1 Definitions.** The following definitions apply in this Part 3025:

- (a) “Final determination” means the written determination and findings required by 39 U.S.C. § 404(d)(3).
- (b) “Administrative record” means all documents and materials created by the Postal Service or made available by the public to the Postal Service for its review in anticipation of the action for which review is sought.
- (c) “Petitioner” means a person who files a petition for review document that the Commission accepts as an appeal of a post office closing or consolidation.
- (d) “Petition for Review” means a written request filed with the Commission in either hardcopy or electronic form that the Commission accepts as an appeal of a post office closing or consolidation. Facsimiles, e-mails, instant messages or other forms of electronic communications will not be accepted as a petition for review.
- (e)(d) “Post office” means a Postal Service operated retail facility.
- (f)(e) “Relocate” means that the location of a post office within a community changes, but the total number of post offices within the community remains the same or increases.

**§ 3025.2 Applicability.**

- (a) The rules in this part apply when (1) the Postal Service decides to close or consolidate a post office, and (2) a patron of that post office wants to appeal the closing or consolidation.
- (b) The following rules in Part 3001, subpart A apply to appeals of post office closings or consolidations: rules 1-9, 11(a), (c)-(f), 12-17, and 21-20-22.
- (c) All motions filed by the Postal Service shall plainly state the deadline for filing answers. Answers to all motions shall be filed with the Commission within 14 days of the filing of the Postal Service's motion.

~~(d)(e)~~ This part does not apply when the Postal Service relocates a post office within a community.

### **§ 3025.3 Notice by the Postal Service.**

(a) *Notice of proposal to close or consolidate a post office.* If the Postal Service proposes to close or consolidate a post office, it must give persons served by that post office notice of its intent to close or consolidate. This notice must be adequate to reasonably inform patrons that they may comment on the proposed closing or consolidation, how and where the comments may be submitted, and when the comments are due.

(b) *Notice of final determination to close or consolidate a post office.* When the Postal Service makes a final determination to close or consolidate a post office, it must give notice to persons served by that post office. The notice must be adequate to reasonably inform them that they may file an appeal with the Postal Regulatory Commission ([www.prc.gov](http://www.prc.gov)) within 30 days of the final determination's being made. Notice must be prominently displayed at the post office to be closed or consolidated and at the facility(s) expected to provide replacement service.

(c) If a post office to be closed or consolidated is suspended, the Postal Service must notify patrons (both delivery and retail) by First-Class Mail of both the proposal to close or consolidate and the final determination.

### **§ 3025.10 Starting an appeal.**

(a) A Postal Service decision to close or consolidate a post office may be appealed by a person served by that office. An appeal is commenced by submitting a petition for review to ~~begun by notifying~~ the Postal Regulatory Commission. ~~in writing.~~ ~~Such a notification is known as a Petition for Review.~~

(b) The Petition for Review must state that the person(s) submitting it are served by the post office that the Postal Service has decided to close or consolidate.

The petition should include the name(s), ~~and~~ address(es), and phone number(s) of the person(s) filing it, ~~and~~ the name or location and ZIP Code of the post office to be closed, and a copy of the Postal Service's final determination, if available. A petitioner may include other information deemed pertinent.

**§ 3025.11 ~~Transmitting an appeal.~~ Submitting appeals and other documents.**

Petitions for review, comments, motions, answers, and other documents ~~A Petition for Review~~ may be submitted by participants other than the Postal Service sent by mail, ~~or~~ electronically through the Commission's website, [www.prc.gov](http://www.prc.gov), or by delivery. ~~Petitions for review may also be brought~~ to the Commission's offices at 901 New York Avenue, NW, Suite 200, Washington DC 20268-0001.

**§ 3025.12 Duplicate appeals.**

If the Commission receives more than one Petition for Review of the same post office closing or consolidation, the petitions will be considered in a single docket.

**§ 3025.13 Deadlines for appeals.**

(a) *In general.* If the Postal Service has issued a final determination to close or consolidate a post office, an appeal ~~must be submitted~~is due within 30 days of the final determination's being ~~posted~~made available in conformance with section 3025.3(b).

(b) *Appeals sent by mail.* If sent by mail, a Petition for Review must be postmarked no later than 30 days after the final determination has been ~~made available~~ posted.

(c) *Appeals sent by other physical delivery.* If sent by some other form of physical delivery, a Petition for Review must be received in the Commission's docket section no later than 4:30 pm on the 30<sup>th</sup> day after the final determination has been ~~made available~~ posted.

(d) *Appeals sent electronically.* If submitted electronically, a Petition for Review must be received in the Commission's docket section no later than 4:30 pm on the 30<sup>th</sup> day after the final determination has been ~~made available~~ posted.

**§ 3025.14 Participation by others.**

(a) Any person (1) served by a post office to be closed or consolidated, or (2) with a demonstrable interest in the closing or consolidation may participate in an appeal. A person may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in section 3025.11.

(b) Persons may submit comments in support of petitioner or in support of the Postal Service in accordance with the deadlines established in this Part. Commenters may use PRC Form 61, which is available on the Commission's website, *www.prc.gov*.

**§ 3025.20 The record on review.**

The record on review includes:

- (1) the final determination;
- (2) the notices to persons served by the post office to be closed or consolidated;
- (3) the administrative record;
- (4) all documents submitted in the appeal proceeding; and
- (5) facts of which the Commission can properly take official notice.

However, a petitioner or commenter may dispute factual matters or conclusions drawn in the administrative record.

**§ 3025.21 Filing of the administrative record.**

The Postal Service shall file the administrative record within 10 days of the date of posting of a Petition for Review on the Commission's website. The Commission may alter this time for good cause. The Postal Service shall notify participants who do not

file electronically of the filing of the administrative record. Such notification shall be made by First-Class Mail. The Postal Service shall file with the Commission a copy of the notice mailed to participants which displays the date on which the notice was mailed.

**§ 3025.22 Making documents available for inspection by the public.**

Copies of all filings (including the administrative record) related to an appeal shall be available for public inspection at the post office whose closure or consolidation is under review. If that post office has been suspended or closed, the filings shall be available at the nearest open post office. The Postal Service must notify all petitioners and commenters of the location(s) (other than the Commission offices) where the filings may be inspected. Such notification shall be made by First-Class Mail. The Postal Service shall file with the Commission a copy of the notice mailed to participants which displays the date on which the notice was mailed.

**§ 3025.30 Suspension pending review.**

(a) Subject to subsection (b), a final determination to close or consolidate a post office is suspended until final disposition by the Commission when a person files a timely Petition for Review.

(b) Upon motion by the Postal Service pursuant to rule 21 of the rules of practice, the Commission may for good cause permit the closure or consolidation of a post office prior to final disposition of an appeal under this part 3025. In the absence of a showing of good cause, the Postal Service's motion shall be filed not later than the date that it files the administrative record pursuant to section 3025.21. A Postal Service motion under this section shall clearly state the deadline for answers to its motion.

**§ 3025.40 Participant statement.**

When a timely Petition for Review of a decision to close or consolidate a post office is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This

form is designed to inform petitioners on how to make a statement of his/her arguments in support of the petition. The instructions for Form 61 shall provide:

- (1) a concise explanation of the purpose of the form;
- (2) a copy of section 404(d)(2)(A) of title 39, United States Code; and
- (3) notification that, if petitioner prefers, he or she may file a brief in lieu of or in addition to completing PRC Form 61.

**§ 3025.41 Due date for participant statement.**

The statement or brief of petitioner, and of any other participant supporting petitioner, shall be filed not more than 20 days after the filing of the administrative record.

**§ 3025.42 Due date for Postal Service response.**

The statement or brief of the Postal Service, and of any other participant supporting the Postal Service, shall be filed not more than 14 days after the date for filing of petitioner's statement.

**§ 3025.43 Due date for replies to the Postal Service.**

Petitioner, and any other participant supporting petitioner, may file a reply to the Postal Service response not more than 147 days after the date of the Postal Service response. Replies are limited to issues discussed in the Postal Service's response.